Supreme Court of the United States.

OCTOBER TERM, 1901.

Docket No. 94.

THE HUGULEY MANUFACTURING COMPANY, WILLIAM T. HUGULEY, AND THE GEORGIA AND ALABAMA MANUFACTURING COMPANY, APPELLANTS,

versus

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER, APPELLEES.

Petition for Certiorari to Complete the Record.

The appellants in the above-stated case, pending in the Supreme Court of the United States on appeal from the circuit court of appeals for the fifth circuit, come, by their counsel, and suggest a diminution of the record in this case as the same is certified to the Supreme Court by the clerk of the circuit court of appeals, and move that this honorable court will cause a writ of certiorari to issue to bring before the Supreme Court the full and complete record in said circuit court of appeals in the cause above stated.

And the appellants respectfully state that it is apparent on the face of the record, as certified to this court by the clerk of the circuit court of appeals, that it is erroneous and incomplete in respect of the following matters, namely:

1. That the clerk of the circuit court of appeals does not state that the transcript to which his certificate is appended is a full, true, or complete copy or transcript of the record in said cause, but that it contains "a true copy of the record upon which the cause was heard in the United States court of appeals and all proceedings had in said cause, including the opinion of the court in the case of The Huguley Manufacturing Company and Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills and J. J. Robinson, trustee, &c., appellees, No. 798, as the same remains upon the files and records of said United States circuit court of appeals."

2. In the minutes of the said circuit court of appeals, on page 98 of the printed Record, the decree of the court affirming the decree of the circuit court for the northern district of Georgia, entered on the 16th day of May, 1899, was rendered in case No. 789, and all the minute entries in said cause in said court at its November term, 1899, were made in case No. 789.

3. The opinion of the circuit court of appeals, which is copied in the Record on pages 105–108, was rendered in case No. 798, and the appeal and all the proceedings thereon were had in case No. 798.

4. As the appeal and the certificate of the clerk state that the number of the case is 798 and the opinion of the circuit

court of appeals was delivered in case 798, the judgment of the Supreme Court will be rendered in that case unless the record of the circuit court of appeals is amended, either by the Supreme Court or by the circuit court of appeals, and there is nothing in the record thus certified to the Supreme Court in this case by which such amendment can be made.

5. It is impossible to identify these decrees with the decree of the circuit court of appeals for the fifth circuit until the record is amended so as to correct the discrepancy in the numbers stated above in this motion, and also in the absence of a certified transcript of the record of the circuit court of the northern district of Georgia on which the appeal was allowed by Judge Newman on the 2d December, 1898.

6. The appeal in this cause that was taken from the circuit court of the northern district of Georgia to the circuit court of appeals from the fifth circuit was allowed by Hon. William T. Newman, circuit judge, on the 2d day of December, 1898.

The petition on which said appeal was allowed was filed in case numbered 360 on the equity docket of said circuit court, and was directed to alleged errors in three decrees and decretal orders in said cause, rendered respectively on the 28th of February and the 4th day of June and the 15th of October, 1898 (Record, p. 78). In the decree of October 15, L. Lanier is described as a petitioner for the title to the property which is the subject of this litigation. It was through this petition and the proceedings thereon that said Lanier became a party interested in this cause.

7. In the record certified in this cause there is no certified transcript of the record from the circuit court of the United States for the northern district of Georgia upon which the hearing was had or the decree was rendered on the 16th of May, 1899, in the circuit court of appeals, and there is no order, decree, or memorandum in the record certified to the Supreme Court that in any way describes or identifies the papers, pleadings, or proofs on which the appeal was heard in the circuit court of appeals for the fifth circuit that was allowed by Hon. William T. Newman, circuit judge, on December 2, 1898, and was prosecuted by the appellants therein, viz., "The Huguley Manufacturing Company, William T. Huguley, and The Alabama and Georgia Manufacturing Company."

8. In the opinion of the circuit court of appeals for the fifth circuit in this cause, delivered by Shelby, circuit judge, and brought before the Supreme Court on this appeal, that court finds that "on January 1st, 1884, the Alabama and Georgia Manufacturing Company executed a mortgage or deed of trust to J. J. Robinson and two others to secure $65,000.00 of bonds issued that day." There is no copy of the mortgage or of any bond secured by it or any statement of the contents or of the purport or terms thereof in any part of the record certified to the Supreme Court.

9. Then the circuit court of appeals proceeds to find the following facts, some of which could only appear from the record in the cause, and some may depend on proofs made in the cause, namely:

(*a.*) "Subsequently the property embraced in the mortgage was sold under a decree of a State court, subject to the mortgage."

(*b.*) "Under this sale the Huguley Manufacturing Company became the purchaser of this property, subject to the incumbrance of the mortgage for $65,000."

(*c.*) "It was placed in possession of the property."

(*d.*) "A bill was filed in the circuit court of the United States for the northern district of Georgia to foreclose the mortgage, a decree of foreclosure rendered, and on appeal to this court the appeal was reversed."

(*e.*) "The decree of foreclosure being vacated by reversal the circuit court granted a petition on the part of the Huguley Manufacturing Company to restore it to the possession of the property, upon condition, however, that it pay into court $10,000, which had been paid by the purchaser under the now vacated foreclosure sale."

(*f.*) "This condition the Huguley Manufacturing Company did not comply with, but resisted."

(*g.*) "It took another appeal to this court and the decree of the circuit court was affirmed (30 U. S. App., 683; 72 Fed. Rep., 708)."

(*h.*) "At the first foreclosure sale the property was purchased for the bondholders, who organized a corporation under the name of the Galeton Cotton Mills."

(*i.*) "This corporation was placed in possession of the property under the first decree of foreclosure and held the same pending the appeal and after the reversal of the decree, and upon the second foreclosure became purchasers again and have remained continuously in possession, operating the mills on the property."

(*k.*) "The Galeton Mills were in possession of the property under the first decree of foreclosure for a period of three years and eight months."

These are all the facts upon which the circuit court of appeals based its judgment affirming the decrees of the circuit court for the northern district of Georgia.

10. The record of the proceedings in the circuit court of the northern district of Georgia in said cause, as the same is certified to the Supreme Court,—

(*a.*) Does not show the fact or the terms of the alleged sale of the mortgaged property by a State court, or that it was sold subject to the mortgage.

(*b.*) It does not show that the Huguley Manufacturing Company became the purchaser subject to the incumbrance of the mortgage, or that it was placed in possession of the property.

(*c.*) The bill is not in the record that is alleged to have been filed to foreclose the mortgage or the decree thereon or its reversal.

(*d.*) Reference is made to the volumes of reports of decided cases, which indicates that the circuit court of appeals consulted them for the purpose of ascertaining facts in considering this case, and such opinions, if they were filed in the cause or made a part of the record by reference, are required to be annexed to the record on appeal and transmitted to the Supreme Court under section 2 of rule 8 of the rules of this court.

11. Under a stipulation of counsel in this cause, copied on page 5 of the Record, the findings of the circuit court of appeals, above stated, may have reference to the records in

this cause that were filed in that court on two former appeals.

That agreement is as follows:

"CIRCUIT COURT U. S., NORTHERN DIST. OF GA.

"J. J. ROBINSON ET AL.
vs.
"ALABAMA AND GEORGIA MANUFACTURING CO. ET AL. } 360.

"Appeal to the circuit court of appeals for the 5th circuit of the United States.

"We agree that the clerk, in making up the record, may omit therefrom all such parts as appear in the record made up and transmitted on the two former appeals in this case to said circuit court of appeals.

"And either party, on the hearing of this appeal, may be at liberty to refer to any such parts of the record of said former appeals, or either of them, as they may see proper.

"July 14, 1899.

"J. M. CHILTON,
"W. R. HAMMOND,
"*Att'ys for Appellants.*
"B. F. ABBOTT, *Solicitor of Record.*
"DORSEY, BREWSTER & HOWELL."

12. The references to these reported cases, in the opinion of the circuit court of appeals in this cause, identify them as being parts of the record upon which the same was heard in that court on the appeal allowed by Judge Newman in his order dated December 2, 1898, and the opinions in those cases should have been copied in the record on this appeal (Record, p. 79).

13. And the appellants now produce in this honorable court a transcript which contains a true copy of the proceedings in said equity cause No. 360, from its beginning to its

ending, in said circuit court of the United States for the northern district of Georgia, as the same was transmitted to the circuit court of appeals for the fifth circuit, and was heard and decided in said court on April 17 and 18 and May 16, 1899.

In the certified transcript now submitted to this honorable court the proceedings in the circuit court of the northern district of Georgia in said cause, which are not contained in the transcript in this cause, filed in the office of the clerk of the Supreme Court June 25, 1900, are set forth on pages 1 to 66 of said transcript, down to the words "order entering mandate."

And from those words on page 66 to and including the words "the decree of the circuit court is affirmed," on page 188 of said certified transcript, the two transcripts are the same in substance.

14. The transcript in said cause, with the certificate of the clerk, now presented with this motion, was filed in the clerk's office of the Supreme Court of the United States on the 21st of October, 1899, in support of a motion for a writ of certiorari to review and determine the judgment and decree of the circuit court of appeals in a case entitled The Huguley Manufacturing Company *et als. vs.* The Galeton Cotton Mills *et als.*, No. 798 of the docket of said court, as provided in the act of Congress approved March 3, 1891; and said transcript was printed under the direction of the clerk of the Supreme Court and placed on file with said motion.

15. And said motion for certiorari and review having been denied, thereupon the appellants appealed from said

judgment of the circuit court of appeals for the fifth circuit to the Supreme Court of the United States in said case No. 798, and the proceedings on said appeal are set forth in the transcript filed in the Supreme Court on June 25, 1900, on page 103 to the close thereof on page 111.

16. The error and discrepancy in the said transcript between the cause numbered 798, in which said appeal was taken, following the same number in the caption of the opinion of the circuit court of appeals, and the number of the case in said court in which its judgment is recorded in the minutes on page 98 of the Record, which is cause No. 730, and the absence of a certificate from the circuit court of the northern district of Georgia, was not discovered until said record was printed, which was after the adjournment of the October term, 1900, of the Supreme Court.

17. And until said record was printed it was not practicable to bring to the attention of the Supreme Court, in a manner to conform to the rules of the court, the precise matter that was omitted from the record, as it was certified to the Supreme Court by the clerk of the circuit court of appeals in his certificate, on page 108 of the Record, dated 15th May, 1900.

18. The appeal in said cause was allowed by Don A. Pardee, circuit judge, on the 12th of May, 1900, and the transcript of the record, sent by mail, did not reach the clerk of the Supreme Court until June 25, 1900, so that the clerk of the circuit court of appeals either misdated his certificate or failed to send the transcript to the clerk of the Supreme Court until about June 20, 1900.

19. In the transcript of the record in cause No. 360, in equity, in the circuit court of the northern district of Georgia, and of the proceedings on the appeal in said cause, in the circuit court of appeals for the fifth circuit, which transcript is submitted to the court with this motion, the clerk of the said circuit court of appeals certifies as follows:

"UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

"I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing two hundred and ten pages, numbered from one to two hundred and ten, inclusive, contain a true copy of extracts from the record in the case of The Huguley Manufacturing Co. *et als.*, No. 798, *vs.* The Galeton Cotton Mills *et als.*, as the same remains upon the files and records of said United States circuit court of appeals.

"In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 6th day of October, 1899.

"J. M. McKEE,

"*Clerk of the United States Court of*

"*Appeals for the Fifth Circuit.*"

20. These "extracts from the record" in case 798 do not contain the copies of the minutes in case 789. These are copied in the transcript, on page 98 of the print of the record in the case No. 94 on the docket of the Supreme Court, in which this motion is made.

21. Appellants are convinced but do not know the fact that the number 789 in those minutes has been inserted in the record of said cause 360, appealed from the circuit court of the northern district of Georgia, by mistake; but the power to correct such an error in the judgment of the circuit court of appeals rests with that court or with the Su-

preme Court on the appeal in this cause, and it cannot be corrected by an agreement of the parties *dehors* the record in said circuit court of appeals.

22. The two certificates of the clerk of the circuit court of appeals to these transcripts, when compared with the agreement of counsel, copied in the record, to which he certified on the 15th of May, 1900 (Record, pages 3 and 4), show that the circuit court of appeals did not sufficiently identify "the extracts from the record," or "the record upon which the cause was heard" under said agreement, as to what it contained or should contain, to enable the clerk to certify what was the true, full, and complete record in the cause that it affirmed at the November term, 1898, of said court, and such identification is indispensable to the proper hearing of this cause in the Supreme Court.

23. If such errors, irregularities, and deficiencies in the records of the circuit court of appeals may be corrected in the Supreme Court on an assignment of errors by the appellants, a writ of error is indispensable to enable them to make such an assignment, so that the entire record shall be before the Supreme Court.

24. If this is a matter that cannot be corrected on the motion of appellants, made in the Supreme Court, but can only be corrected by a new proceeding in the circuit court of appeals, or if the correction cannot be made in the Supreme Court because the true state of the record has not been determined in the circuit court of appeals, in either case the appellants respectfully suggest that the cause be remanded to that court, without prejudice to the appeal,

with direction that said court shall define and declare what is the full and complete record upon which this cause was heard and determined in the circuit court of appeals for the fifth circuit at its November term, 1900; that the same may be correctly certified to this honorable court.

25. And the appellants pray that such writ of certiorari shall issue as will bring before this honorable court the full and complete record on which this cause was heard and determined in the circuit court of appeals for the fifth circuit, and that in connection with the granting of such writ this honorable court will issue such mandate to said circuit court of appeals as may be proper and necessary to cause it to ascertain and place upon its records the pleadings, proceedings, proofs, orders, and decrees of the circuit court of the northern district of Georgia upon which the judgment or decree of said court of appeals in this cause was founded, and if it is necessary and proper to that end that this cause be remanded to said court, without prejudice to the appeal taken therein by appellants, to enable or require said circuit court of appeals to correct any errors or imperfections in its records in this cause that may be found to exist, and especially any error that may be found in the minutes of said court as to the judgment of affirmance therein rendered at the November term of said court, in the year 1894.

JOHN T. MORGAN,
Attorney for the Appellants.

FILED
NOV 18 1901
JAMES H. McKENNEY,
Clerk.

No. 94.

Affidavit of Huguley.

Filed Nov. 18, 1901.

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET AL.

AFFIDAVIT OF WILLIAM T. HUGULEY IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI.

JOHN T. MORGAN,
Attorney for Appellants.

(17,813.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1235

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY AND THE ALABAMA AND GEORGIA MANUFACTURING COMPANY AND WILLIAM T. HUGULEY, APPELLANTS,

vs.

THE GALETON COTTON MILLS, J. J. ROBINSON, TRUSTEE, AND L. LANIER.

AFFIDAVIT OF WILLIAM T. HUGULEY.

William T. Huguley appeared before the undersigned, James D. Maher, a notary public in and for the District of Columbia, and, being duly sworn, states on oath that he has been the sole agent of the appellants in preparing the record in this case for the hearing before the Supreme Court, and he has supplied the money to pay for all the transcripts and all the printing in the case until his means have been exhausted. The other appellants are insolvent and

have no means to assist in the prosecution of this suit. He deposited with the clerk of this court the money required to pay for the printing of the transcript of the record on this appeal, which has been paid for, and provided a still larger sum and placed it subject to the order of the clerk if it should be found that other parts of the record in the circuit court of the northern district of Georgia could be printed as a part of the transcript in the cause without obtaining the order of the Supreme Court. The counsel of affiant carefully examined the certificate of the clerk appended to the transcript filed in this case, and he having certified that it contained a true copy of the record upon which the cause was heard in the United States circuit court of appeals and all the proceedings had in the said case, and the opinion of the court therein, as the same remains on the files and records of the circuit court of appeals, affiant's counsel advised him that the transcript could not be enlarged by the incorporation of other matters without the order of the Supreme Court.

At the same time a record in this case was on the files of the Supreme Court on a motion for certiorari, which was certified at a previous day by the same clerk, which transcript set out various proceedings in said cause which are not contained in the later transcript now before the court, and affiant believed that said transcript filed on the motion for certiorari contained all the proceedings in said cause upon which the case was heard in the circuit court of appeals under the stipulations of counsel, as stated in the record.

During a large part of the past summer the clerk of the circuit court of appeals, who made the certificate upon both

these transcripts, was in ill health and died, and he could do nothing to explain or rectify these manifest embarrassments and mistakes, and his death has put it out of affiant's power to explain them. There is no certificate in the record sent up from the clerk of the circuit court of the northern district of Georgia which sets forth or establishes the record in said court that was taken to the circuit court of appeals on the appeal that was determined in this case, as shown in the transcript now before the Supreme Court. In said record there are stipulations of counsel that refer to printed volumes of transcripts in this case that were the foundation of two previous hearings on appeals from said circuit court to the circuit court of appeals. Affiant has searched diligently for such transcripts and has been able to obtain a copy of each of them, which he believes to be correct, and now presents the transcripts with this affidavit. They came into his possession too late to be printed with this affidavit.

Affiant has not the means to enable him to print these transcripts, which are herein referred to as transcripts A and B.

Affiant's counsel presented these transcripts to the counsel for the appellees, stating what they were, and asking him to examine them and to consent that they should be filed as part of the record in this case. The counsel for the appellees declined to examine them, saying that the appellees would make no agreement or consent as to the record in this case, as affiant is informed and believes and so states.

WM. T. HUGULEY.

Sworn to and subscribed before me this 18th November, 1901.

JAMES D. MAHER,

[SEAL.] *Notary Public, District of Columbia.*

[Endorsed :] File No., 17,813. Supreme Court U. S., October term, 1901. Term No., 94. The Huguley Mfg. Co. *et al.*, app'ts, *vs.* The Galeton Cotton Mills *et al.* Affidavit of Wm. T. Huguley in support of motion for writ of certiorari. Filed Nov. 18, 1901.

No. 94.

Office Supreme Court
FILED
NOV 4 1901
JAMES H. McKENNEY,
Clerk

Affidavits for Appellant.

Supreme Court of the United States.

OCTOBER TERM, 1901.

Filed Nov. 4, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., APPELLANTS,

vs.

THE GALETON COTTON MILLS ET AL.

AFFIDAVITS OF WM. R. HAMMOND AND WM. T. HUGULEY IN SUPPORT OF MOTION FOR WRIT OF CERTIORARI.

[illegible]N T. MORGAN,
Counsel for Appellants.

(17,813.)

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1087

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 94.

THE HUGULEY MANUFACTURING COMPANY ET AL., PETITIONERS,

versus

THE GALETON COTTON MILLS ET AL., RESPONDENTS.

PETITION FOR CERTIORARI TO COMPLETE THE RECORD.

STATE OF GEORGIA, }
Fulton County. }

Before the undersigned, a notary public in and for said county, personally comes William R. Hammond, who, on oath, deposes and states as follows:

Deponent was of counsel in the causes before the circuit court of appeals for the fifth judicial circuit, mentioned and referred to in the third paragraph of the copy of the affidavit of William T. Huguley on behalf of himself and the Huguley Manufacturing Company, after the first appeal in connection with the proceedings that were had to recover the rents, issues, and profits from the Galeton Cotton Mills

during the time of its occupancy of the mortgaged premises, under the sale under the original decree of foreclosure which was reversed on the first appeal.

Deponent has carefully read over the attached copy affidavit of William T. Huguley in regard to what occurred in connection with the appeal from the United States circuit court of appeals for the fifth judicial circuit, and states that while he does not remember all the details stated by Mr. Huguley in said affidavit, that he does recall and remember the main facts connected therewith, as stated by Mr. Huguley, and his statement of the same is substantially correct.

Deponent has no doubt that all the details, as stated by Mr. Huguley, are correct and accurate, although he cannot recall and remember each and every one of them. Deponent does remember distinctly that under the reference for accounting for rents and profits a very large and voluminous record was returned to the clerk's office in Atlanta, and that there was no accounting made by the Galeton Cotton Mills in the form of "debtor and creditor," as required by the equity rules, but that instead thereof the Galeton Cotton Mills, through their counsel, brought in before the auditor in said cause a very large quantity of loose papers, which evidently had not been assorted or digested, and stated that they were the vouchers which we had called for. Deponent now remembers that they were dumped *en masse* before the special master, as Mr. Huguley states, and there must have been several bushels of them, as he states. Deponent does not remember what these papers were, but only knows that it was practically impossible for counsel to do anything with them in the way of arriving at any correct conclusion in reference to the accounting which should have been made under the equity rules, in the form of "debtor and creditor," by the Galeton Cotton Mills.

Deponent does remember that under this state of facts all of these papers having been returned by the special master

to the clerk's office as a part of the record in said cause, that it was an exceedingly difficult and troublesome problem for deponent and his associate, Judge John M. Chilton, to determine what was to be done in reference to the printing of the record on the appeal that was taken to the circuit court of appeals for the fifth judicial circuit. Deponent did attend the said circuit court of appeals with his associate and did make a motion to tax the fund in court with the expense of printing the record, counsel for appellee having refused to make any consent in reference to the abridgment of the record. Deponent did earnestly endeavor to procure a consent from the counsel for appellee as to the abridgment of the record, but without any success whatever, so much so that deponent was impressed with the idea that it was their purpose to prevent the appeal by putting upon the appellants the enormous expense that would have been necessary to print all of this record.

As deponent now remembers, the consent for the abbreviation that was made was only obtained after a strong suggestion of the same was made by Hon. Don A. Pardee, one of the judges of the circuit court of appeals. Deponent was impressed with the idea that counsel for appellee felt under some constraint to make the consent after it was suggested by Judge Pardee, because they feared that the expense of printing the entire record would be ordered by the court to be taxed against the fund in court.

Deponent further states that it was distinctly understood and agreed between deponent and his associate, as counsel for appellants, and the court that the court would not confine itself to the consideration alone of the portion of the record that was printed, but would take into consideration any portion of the record that was not printed that might be deemed necessary to a proper determination of the case.

Deponent believes that Mr. Huguley would remember details of the facts in reference to this whole transaction better than deponent would, as he was exceedingly vigilant

in noting everything that occurred, and extraordinarily diligent in keeping up with every phase and detail of the cause.

W. R. HAMMOND.

Sworn to and subscribed before me this October 31, 1901.

[Seal of Edgar Dunlap, Notary Public, Fulton County, Ga.]

EDGAR DUNLAP,
Notary Public, Fulton County, Ga.

Petition for Certiorari to Complete the Record.

THE HUGULEY MANUFACTURING COMPANY ET AL., *Petitioners,*
versus
THE GALETON COTTON MILLS ET AL., *Respondents.*

DISTRICT OF COLUMBIA, }
City of Washington. }

Before the undersigned, a notary public, comes William T. Huguley, who, on oath, avers as follows:

1. That he is the same William T. Huguley, one of the petitioners in the cause, No. 94, October term, 1901, pending in the Supreme Court of the United States, entitled: "The Huguley Manufacturing Company, William T. Huguley, and The Alabama and Georgia Manufacturing Company, appellants, *vs.* The Galeton Cotton Mills, J. J. Robinson, trustee, and L. Lanier, appellees."

2. Respecting the proofs and exhibits offered in the United States circuit court of appeals, fifth circuit, No. 798, and certified to the Supreme Court of the United States and set out in transcripts and brief of Hon. John T. Morgan, of counsel for petitioners, and the history and facts resulting in the correspondence and "consent orders" between counsel,

appearing in printed transcript No. 17813, docket No. 94, pp. 1–6, deponent testifies as follows:

3. During the course of the several appeals from the circuit court of the United States for northern district of Georgia to the United States circuit court of appeals, fifth circuit, three in number, and especially under the reference for accounting for rents and profits, had thereunder, pursuant to the mandate of the latter court, a voluminous record, covering testimony and exhibits, was thus piled up in the office of the clerk in Atlanta, largely due to the failure, on part of the accounting parties, the Galeton Cotton Mills *et al.* and their solicitors, to observe the usual equity rules in connection with such accounting, and in lieu of the proper statement in the form of "debtor and creditor," with customary exhibits accompanying, confined strictly to the accounting cotton-duck mill, plunging before the special master, *en masse*, several bushels and baskets of miscellaneous so-called "vouchers" and other papers, unidentified and unproven, with no attempt at proof, all covering the operations not only of the accounting cotton-duck mill, but of two other cotton mills, namely, the defendant The West Point Manufacturing Company and also the Lanett Cotton Mills, but the greater bulk of which in nowise related to the actual operations or business of the said accounting corporation. Again, defendants having introduced in defense, and as their sole and only defense, to the charge of movants for rents and profits, two certain books styled ledger and journal, and certain other copies of other transactions, cotton books, pay-roll books, accounts sales, and the like, and rested, the greater bulk of the oral testimony adduced by said defendants, and making up more than half of the typewritten record of testimony, was restricted to the single charge of movants of $40,000 or $50,000 for wastes and damages, etc., awarded the movants under said mandate and decretal order, if any, and related solely to the defense thereto.

4. Deponent avers that when in the act of preparing to carry up the cause to the circuit court of appeals for the third time, confronted as they were with the above condition of the record, the cost to print which was estimated would exceed, if printed in full, $10,000, his solicitors, Judge Wm. R. Hammond and Judge John M. Chilton, were at exceeding pains to accomplish due and proper abridgment of said record, as fully appears by the certified transcript and affidavits filed herewith. In this connection, and in proof of the great length to which deponent consented to go and the sacrifice voluntarily made in order to contribute his part toward the reasonable abridgment of this transcript, affiant refers in particular to the proposition made by his solicitors to the solicitors of defendants, in substance, that the claim for said $40,000 or $50,000 of wastes, damages, etc., contended for, with ample and positive evidence of numerous creditable witnesses to support it, would be waived and abandoned, provided said solicitors of the Galeton Cotton Mills *et al.* would consent to the co-operation asked for, looking to said abridgment, pointing out to them that the omission of such testimony named would accomplish a reduction of more than one-half of the whole transcript to be sent up.

5. Notwithstanding the several most reasonable and fair propositions of affiant's solicitors advanced, the solicitors of the defendants utterly refused to lend their consent or co-operation, but, instead of abridging, they insisted and persisted in affiant printing the whole voluminous record, including all that mass of miscellaneous papers and books, etc., relating to the other cotton mills and their transactions, and, among other things, numbers of cotton books, etc., of such of the great cotton houses whose testimony affiant had invoked, but the evidence from which had been compiled and submitted in schedule form.

6. Thus matters stood when, having exhausted all reasonable endeavors, and encouraged by Honorable Don A. Pardee, circuit judge, who, happening in Atlanta at that time, was shown the said "bushels and barrels" of documents, the solicitors of affiant applied, some three weeks in advance of the hearing, to the circuit court of appeals, New Orleans, for relief, on motion to tax a certain fund of $57,000 in the registry of court, and the application as to which was in dispute, with all proper costs of printing such record as said court of appeals should direct brought up. Counsel for both sides, as well as affiant and L. Lanier, appeared before the court. The result was that, at the instance of Judge Pardee, who dictated the consent order appearing on page 1 of the transcript (No. 94), it was then and there expressly agreed that the appellants should print only the 156 pages of pleadings, etc., as then pointed out and now certified up, and inasmuch as Judge Newman, in the lower court, had treated said $57,000 as a fund in court, ordering certain disbursements thereunder to attorneys, master, and stenographer, etc., Circuit Judge Pardee held that the court would order such other portion of the record as it might deem necessary or proper thereafter to be printed, taxing said fund with the costs thereof. This consent order the solicitors of appellants cheerfully subscribed to, but the solicitors of appellee, under instructions from said Lanier, while hesitating, finally reluctantly yielded and signed, but not until warned that unless they lent their assent the court would meet the issue by passing a special order in premises.

7. Affiant can testify to the accuracy and truthfulness of each and all the foregoing facts, which were so deeply impressed upon his mind and recollection at the time, and since refreshed from time to time, by reason of the great difficulties then confronting him, rendered all the more onerous by the persistent and unreasonable stand taken in said matter of abridgment, etc., by said Lanier and his solicitors in

their effort to smother affiant's ability to appeal, and the consequent relief felt when absolved by the said court of appeals from further responsibility in the whole matter of the record.

WILLIAM T. HUGULEY.

Subscribed and sworn to before me this 4th day of November, 1901.

[Seal of L. M. Fox, Notary Public, District of Columbia.]

L. M. FOX,
Notary Public.

[Endorsed:] File No., 17,813. Supreme Court U. S., October term, 1901. Term No., 94. The Huguley Mfg. Co. *et al.*, app'ts, *vs.* The Galeton Cotton Mills *et al.* Affidavits of Wm. R. Hammond and Wm. T. Huguley in support of motion for writ of certiorari. Filed Nov. 4, 1901.